



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/664,616	09/19/2003	Richard S. Goldhor	mediacip-con	4024
27087 7590 06/24/2010 MICHAEL B. EINSCHLAG, ESQ. 25680 FERNHILL DRIVE LOS ALTOS HILLS, CA 94024				
EXAMINER				
CLOUD, JOIYA M				
ART UNIT		PAPER NUMBER		
2444				
MAIL DATE		DELIVERY MODE		
06/24/2010		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents  
United States Patent and Trademark Office  
P.O. Box 1450  
Alexandria, VA 22313-1450  
[www.uspto.gov](http://www.uspto.gov)

**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 10/664,616  
Filing Date: September 19, 2003  
Appellant(s): GOLDHOR ET AL.

Michael B. Einschlag (Reg. No. 29,301)  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed 04/05/2010 appealing from the Office action mailed 10/06/2009.

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

**(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(8) Evidence Relied Upon**

US PUB.2002/0038374	GUPTA	09-2003
US PATENT 6,381,635	HOYER	04-2002

**(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 10-14, and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gupta (US Publication No. 2002/0038374 A1) in view of Hoyer et al. (US Patent No. 6, 381, 635).

**As per claim 10**, Gupta teaches a method for playback of streaming media received over a non-deterministic delay network at a client device which comprises receiving the streaming media at the client device, which client device includes a CPU (**figure 1 and col. 7, lines 38-50**); playing back the streaming media; determining a time-scale modification rate considering one user input time-scale modification to prepare the streaming media for playback (**col. 6, lines 39-48, user input is used for timeline modification changes and rate for playback at the client device and col. 6, lines 63-col. 7, lines 1-3**); and providing an indication of a current time-scale modification playback rate to the user (**Figure 5, col. 10, lines 23-30**).

Gupta does not explicitly teach determining a measure of *CPU availability*.

However Hoyer teaches determining a measure of CPU availability (**col. 7, lines 10-21**).

Accordingly, it would have been obvious to one of ordinary skill in the networking art at the time the invention was made to have incorporate Gupta's teachings to the teachings of Hoyer, for the purpose of routing request to client servers that are active and available (i.e. servers that have not failed or are in standby mode, **col. 7, lines 10-21**).

**As per claim 11**, Gupta-Hoyer teaches a method further comprises steps of providing an indication of a user requested time-scale modification playback rate (**Figure 5, col. 10, lines 23-30**).

**As per claim 12**, Gupta-Hoyer teaches wherein the step of playing back comprises associating a time-scale modification playback rate with each entry in a playback buffer queue (**col. 10, lines 53-62**).

**As per claim 13**, Gupta-Hoyer teaches wherein the indication comprises a function of recent time-scale modification playback rates (**col. 10, lines 53-62**).

**As per claim 14**, Gupta-Hoyer teaches wherein the step of utilizing comprising ignoring or modifying the user input time-scale modification playback rate when it would interfere with providing continuous playback (**col. 8, lines 40-44**).

**As per claim 18**, Gupta teaches a method for playback of streaming media received over a non-deterministic delay network at a client device which comprises steps of: receiving the streaming media at the client device, which client device includes a CPU; playing back the streaming media; determining a time-scale modification playback rate as a function of the measure and utilizing time-scale modification to prepare the streaming media for playback (**col.**

**6, lines 39-48, user input is used for timeline modification changes and a time-scale modification speed is designated from the user for playback at the client device and col. 6, lines 63-col. 7, lines 1-3).**

Gupta does not teach determining a measure, where the measure is of CPU availability.

However, Hoyer teaches determining a measure, where the measure is of CPU availability (**col. 7, lines 10-21**).

Refer to the motivation of claim 10 which applies equally as well to claim 18.

#### **(10) Response to Argument**

A). "...Gupta et al. does not teach how to mitigate a problem that occurs when a client device has run out of data to present (due to deterministic delays in the network) and must wait until more data arrives" as claimed. Furthermore, Appellant argues Gupta does not even address the problem solved by the invention Representative in Claim 10. "...the teachings of Gupta et al. is completely different from the invention of Representative Claim 10 for a number of reasons..."

As to the above point A), Examiner respectfully disagrees. First, in response to Appellant's arguments against the references individually (see page 10), one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Second, in response to Appellant's argument that the references fail to show certain features of Appellant's invention, it is noted that the features upon which Appellant relies (i.e.,

mitigate a problem that occurs when a client device has run out of data to present (due to deterministic delays in the network) and must wait until more data arrives) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Third, Appellant suggests that the teachings of Gupta is completely different from the invention Representative in Claim 10 as, claim 10 requires determining a time-scale modification playback rate considering the measure of CPU availability and user input time-scale modification playback rate requests whereas Gupta et al teaches determining a time scale modification playback rate only using a time-scale modification playback rate provided by user input (page 11). Examiner submits that Appellant's arguments fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references.

Furthermore, Gupta is not relied upon to teach determining a measure of CPU availability.

B). "Hoyer does not teach or suggest CPU utilization for any purpose whatsoever other than to display it."

As to the above point B), Examiner respectfully disagrees. Examiner notes however that one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. In this case, Hoyer *does* teach the claim language, i.e. "determining a measure of CPU availability," as required by the claim. No where does the instant claim recite that actual CPU availability is determined, that a time scale modification

playback rate is based on CPU availability, but merely that *a measure* of CPU availability is determined. Therefore, Examiner submits that given the terms “cpu availability” (i.e. a measure of CPU available) and “cpu utilization” (i.e. a measure of CPU being used) are well known in the art, a person of ordinary skill in the art would be reasonably apprised to interpret *a measure of CPU availability* to include CPU utilization, the effective inverse of CPU availability. Moreover, high availability implies low utilization and vice versa, thus one is a measure of the other. Examiner suggests Appellant to amend the claim language to clearly recite the intended invention.

C). “...Appellants respectfully submits that neither Gupta et al. nor Hoyer et al. teaches or suggests in any manner whatsoever the following element of claim 12. “wherein playing back comprises associating a time-scale modification playback rate with each entry in a playback buffer queue.”

As to the above point C), Examiner respectfully disagrees. Gupta clearly discloses a time-scale modification rate (designated speeds indicating the modified rate of media stream) associated (designation by the user of the rate with the stream) with the media streams received to be played back to clients, with such streams inherently passing the buffer. Each media stream is associated with a time-scale modification rate to be rendered accordingly in playback (Examiner includes further detailed mappings disclosing the above limitation, see paragraphs [0058], [0059] and [0060]).

D). “...Appellants respectfully submits that neither Gupta et al. nor Hoyer et al. teaches or suggests in any manner whatsoever the following element of claim 12. “wherein the



step of utilizing comprises ignoring or modifying the user input time-scale modification playback rate when it would interfere with providing continuous playback.”

As to the above point D), Examiner respectfully disagrees. Examiner submits that the instant claim recites “ignoring or modifying the user input time-scale modification playback rate *when it would* interfere with providing continuous playback.” No steps are provided that actually recites an interfering with providing continuous playback taking place. Rather, the instant claim performs specified functionality (i.e. ignoring or modifying) *when* a certain condition is true. Accordingly, to teach the subject matter, as in claim 12, a reference only needs to teach ignoring or modifying the user input time-scale modification playback rate. Thus, the teaching of Gupta to modify the user input time-scale modification rate to match available bandwidth (as bandwidth availability is required for continuous playback) clearly meets this claim limitation (see paragraphs [0086] and [0095]).

#### **(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner’s answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Joiya M. Cloud

June 13, 2010

/William C. Vaughn, Jr./  
Supervisory Patent Examiner, Art Unit 2444

Application/Control Number: 10/664,616

Page 9

Art Unit: 2444

Conferees:

/William C. Vaughn, Jr./

Supervisory Patent Examiner, Art Unit 2444

/Ranodhi N Serrao/

Primary Examiner, Art Unit 2444